CPH001 (4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

(C.G.)

W.P. No. 3498 **/2003**

PETITIONER

Ku. Anjum
Aged about 19 years
D/o Shri Nizamuddin
R/o QR. No. 3-C,
Street No. 30,
Sector-7, Bhilainagar,
Tahsil & Distt. Durg
(Chhattisgarh)

P.R. No. 33/12/03
Presented by Shri Jitendra Pal
dated 26/10/03

VERSUS

RESPONDENTS

1. State of Chhattisgarh
Through the Secretary
Department of
Public Health
Medical Education
& Family Planning
D.K.S. Bhawan, Mantralaya
Raipur (Chhattisgarh)

RECEIVED-COPY
28/X/03
Clerk to A G. Bilaspur

2. Guru Ghasidas University
Constituted under the
M.P./C.G. Vishwavidyalaya
Adhiniyam, 1973)
Through the
Vice Chancellor
Post- Bilaspur
(Chhattisgarh)

Copy Rec'd
28/10/03
for-m.c.c.

3. Chhattisgarh Institute
of Medical Sciences
Through its Dean
Bilaspur (Chhattisgarh)

सहायक आयुक्त
एस.के. शुक्ला
बिलासपुर (छ.ग.)
बिलासपुर तहसील केन्द्र

(2) (5)

4. Medical Council of India
Aiwan-E-Galib Marg
Kotla Road,
New Delhi 110002.

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION ETC.

A-F-R (R2)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.3498 of 2003

Ku. Anjum

Versus

State of Chhattisgarh and others

POST FOR ORDER ON 3rd FEBRUARY, 2004

Sd/-
L.C.BHADOO
Judge

23rd 02.2004

A. F. R.

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.3498 of 2003

Ku. Anjum

Versus

State of Chhattisgarh and others

Present: -

Shri Anand Kumar Tiwari, Advocate for the petitioner.

Shri Ranbir Singh, Govt. Advocate for the State/respondent No.1.

Shri Manindra Shrivastava, Advocate for respondents 2 and 3.

O R D E R

(Passed on 3rd February, 2004)

As per L.C. Bhadoo J.

The petitioner has preferred this writ petition under Articles 226/227 of the Constitution of India whereby she has challenged the validity, propriety, legality and correctness of the action of respondents 1 to 3 in not admitting her in the first year of the MBBS course.

2. Brief facts giving rise to this petition are that the petitioner appeared in the Pre Medical Test held on 5/6th June 2003. The petitioner secured 127th rank in the merit list. The petitioner belongs to unreserved category. The mark sheet of the petitioner is Annexure-P/2. Respondent No.2 called the successful candidates for counseling on 24th and 25th September 2003. Apart from other seats some payment seats were reserved for each category of the candidates. Fifteen seats for unreserved open category and 8 seats for unreserved women category were also reserved. The petitioner was also invited for the counseling on 24th September 2003 at 9 am in the Chhattisgarh Institute of Medical Sciences, Bilaspur and it was made clear

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that the petitioner is required to stay for two days. The said counseling letter was sent to the petitioner on 23rd September 2003 under S.No.134.

3. The petitioner appeared in the counseling. However, her counseling could not take place on 24th September 2003 and her counseling could take place on 25th September 2003. At the time of the counseling the petitioner was informed that she has been selected for the payment seats, therefore, she is required to deposit Rs.2,50,000/- immediately. The father of the petitioner asked for the time but the petitioner was not able to deposit the fees up to 6 pm, therefore, she was not given admission.

4. The case of the petitioner is that the rules regarding the counseling are ambiguous and unclear. There was no communication by respondents to the petitioner in clarity and certainty, which was obviously not possible either to be so communicated to the petitioner due to not knowing the outcome of the counseling that the petitioner or any other candidate for that purpose would be required to carry demand draft of Rs.2,50,000/-. The petitioner was always prepared to deposit Rs.2,50,000/- in the name of the Registrar of the respondent University. When the admission in particular category was to be made on probabilities, it was always reasonable to prescribe some respectable time limit for the candidates like the petitioner to deposit the huge amount of Rs.2,50,000/- and some reasonable time ought to have been allowed to the petitioner to deposit the amount.

5. The petitioner immediately through her father offered Rs.50,000/- to be deposited as a guarantee to ensure the seat for her and informed the respondents in particular that her brother has been telephonically instructed to carry the remaining amount and has started from Bhilai to Bilaspur. As soon as he will reach, the remaining amount would be deposited. But the respondents refused to listen the request of the father of the petitioner including the petitioner and they informed that the admission has been cancelled. The petitioner and her father learnt that still 17 seats had fallen vacant for which the counseling would be scheduled to be done on 28th and

29th September 2003. The petitioner once again reached with her father at the Chhattisgarh Institute of Medical Sciences and made repeated and fervent requests that she being a meritorious student on comparative basis should be called for counseling, whereas respondents were bent upon admitting students having lesser marks than the petitioner which was a palpable illegality. Therefore, the petitioner has prayed for issuance of a writ of certiorari quashing the decision of respondents not to permit the petitioner to be admitted and also for issuance of a writ of mandamus for directing the respondents to consider the case of the petitioner for admission in the first year MBBS Course and the M.C.I. be directed to suitably make rules with regard to the counseling.

6. Return has been filed on behalf of respondents 2 and 3 in which it has been mentioned that not only the petitioner but all other candidates who were invited through the letter of counseling for taking part in the counseling on 24-9-2003 and 25-9-2003 fully knew that they may get a chance of admission either against free seat or against the payment seat and, therefore, in such an eventuality, they have to come prepared with payment of fee in either of the case. It was clearly stated in the letter of counseling also and as a matter of fact, on 24-9-2003, the candidates who appeared pursuant to the letter of counseling were first registered and a copy of set of rules of admission was handed over to them and they were clearly told that in the event if they are selected for admission, they will have to immediately deposit the fee prescribed. None of the candidates including the petitioner had any doubt that in the event of the candidate getting a chance of admission against free seat, he/she will have to immediately deposit Rs.29,500/- and in the eventuality of getting a chance against the payment seat, he/she will have to deposit Rs.2,50,000/-. On 24-9-2003, during the course of counseling all the free seats in the general category were filled up and in the evening it was displayed in the office. All the candidates including the petitioner who had taken part in the counseling came to know about the position of the seats and it became very clear in the evening of 24-9-2003 that on 25-9-2003

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counseling had to take place for payment seats only, even then the petitioner did not make any arrangement.

7. Having come to know that she could not succeed to get admission against free seat on 24-9-2003, as all the free seats have been filled up, the petitioner was fully aware of the requirement of deposit of fee, should have made all the arrangements for deposit of fee in case she is offered admission against payment seat during the course of counseling on 25-9-2003. It is not known on what basis a demand draft of Rs.50,000/- was got prepared because it is to be either a draft of Rs.29,500/- or draft of Rs.2,50,000/-. All other candidates who had appeared for counseling on 25-9-2003 seeking a chance of admission against payment seat, upon being offered the admission, deposited fee of Rs.2,50,000/- as per the requirement of rules and the letter of counseling. There were in all 24 admissions made against payment seat in general category and all those candidates deposited the fee then and there. It would be clear that all the candidates had full knowledge that in the event of getting a chance of admission against payment seat they have to deposit fee otherwise candidate next to them would be offered the admission. Thus, the petitioner has failed to comply with the requirement in the matter of admission and, therefore, there is no illegality or arbitrariness on the part of the answering respondents.

8. The petitioner seeks consideration of her case on compassionate ground and in isolation ignoring that rules are framed and conditions are imposed which apply generally to all the candidates. As far as the petitioner's claim for admission against general category seat converted from Freedom Fighter quota seat for which counseling was held on 28-9-2003 and 29-9-2003 is concerned, it is submitted that the aforesaid admission was challenged by filing a writ petition registered as W.P. No.3243/2003 before this Court and admission granted in this case to a general category candidate has been set-aside as per the order of this Court dated 21-11-2003.

9. All the averments made by the petitioner to say that her father was not knowing that they have to bring Rs.2,50,000/- are false and an after thought. The answering respondents specifically deny this fact as the petitioner and her father were clearly had full knowledge that they have to bring Rs.2,50,000/- in the event of getting a chance of admission against the payment seat. Therefore, the petition be dismissed.

10. I have heard Shri Anand Kumar Tiwari, learned counsel for the petitioner, Shri Ranbir Singh, Govt. Advocate for the State and Shri Manindra Shrivastava, counsel for respondents 2 and 3.

11. Learned counsel for the petitioner argued that the petitioner was not specifically informed that in which category her admission is being considered and there was no mention in this regard in the call letter. The petitioner was not aware that her case would be considered against the free seat or the payment seat. Therefore, in the circumstances, in the last moment the petitioner was informed that she has been admitted under the payment seat quota. She should have been given proper opportunity for depositing the fees. Moreover, the rules issued for the admission are also ambiguous and the father of the petitioner immediately informed the Dean of respondent No.3 Institute that his son has already started from Durg and on his arrival he would deposit the fees. But the request of the father of the petitioner was turned down which was arbitrary and illegal. Therefore, the action of respondents in not giving admission to the petitioner was wholly arbitrary and illegal and against the principle of natural justice, therefore, the respondents be directed to consider the case of the petitioner and give her admission, as the petitioner is meritorious student.

12. On the other hand, Mr. Manindra Shrivastava, counsel for respondents 2 and 3 argued that it was specifically mentioned in the call letter for counseling that in case of free seat the candidate is required to deposit Rs.29,500/- and in case of payment seat the candidate is required to deposit Rs.2,50,000/- and such letter was sent to all the candidates in advance. As it

was not possible to ascertain in advance that which candidate is going to get the free seat and the payment seat, therefore, the correct position was informed to all the candidates. Rules were shown to all the candidates at the time of registration, therefore, the petitioner ought to have prepared with a fee for the payment seat. Moreover, when on 24th September 2003 the candidates against the free seat were interviewed and in the evening it was published that all the free seats are filled up, this was a sufficient indication and notice to all the remaining candidates, which were to be interviewed on 25th September 2003 that their case would be considered against the payment seat. Therefore, on 25th September 2003 itself the petitioner ought to have prepared herself for depositing the fees for the payment seat. Therefore, the petition is liable to be dismissed.

13. Having heard the learned counsel for the parties and having perused the records, if we look into the rules for admission for MBBS Course issued by Guru Ghasidas University, Bilaspur for the session 2003-2004, the rule-7 at page 19B of the paper book prescribes that at the time of counseling the college allocated and the seat allocated will not be changed in any circumstance and at the time of counseling the candidate is required to deposit full fees immediately for taking admission otherwise the chance of the candidate will be considered finished. Similarly, if we look into Annexure-P/4, a call letter which was sent to the petitioner, in the second page, in column 12.1 the particulars of the fees have been given that against free seat the candidate will be required to deposit Rs.29,500/- and against the payment seat the candidate will be required to deposit Rs.2,50,000/-. Clause12.2 prescribes that at the time of counseling for admission, the candidate will be required to deposit full fees through a bank draft in the name of the Kul Sachiv, Guru Ghasidas University, Bilaspur immediately. No additional time will be allowed for depositing the fees. Therefore, even at the time of appearing in the examination the rules for admission were known to the petitioner and thereafter vide Annexure-P/4 call letter it was specifically made clear under Clause 12.1 that the candidate will be required to deposit

Rs.29,500/- in case of free seat and Rs.2,50,000/- in case of payment seat. It was specifically mentioned in Clause 12.2 of this call letter that the candidate will be required to deposit the fees immediately and no further time will be allowed. Therefore, the petitioner was required to remain ready with the fees to be deposited.

14. As far as the arguments of the learned counsel for the petitioner is concerned that the petitioner was not informed specifically that her case will be considered against the payment seat, therefore, she should come prepared with the fees. As the arguments of the learned counsel for respondents that in advance looking to the various possibilities and chances it was not possible for them to pin point that which candidate will be considered against the payment seat and which candidate will be considered against the free seat. A general letter was sent to all the candidates explaining them the required fees to be deposited in case of free seat and in case of payment seat and this was sufficient, valid and proper notice to the petitioner. She ought to have come prepared for both the cases. Moreover, as has been mentioned by respondents in their return that the candidates for free seats were interviewed on 24th September 2003 and the free seats were fill on 24th September 2003 itself and the notice was published to that effect in the evening. The petitioner was interviewed on 25th September 2003. This was further notice to the petitioner in advance in the evening of 24th September 2003 that her case cannot be considered against the free seat as all the seats were filled, therefore, the petitioner ought to have remain prepared in advance on 25th September 2003 with fees of Rs.2,50,000/- for payment seat and for this lapse the petitioner or her father cannot blame the respondents.

15. Moreover, all other 24 candidates who received the similar letters deposited their fees against the payment seats which itself shows that other candidates were aware about the fact that the candidates who are to be interviewed on 25th September 2003 are required to be prepared for the payment seat. As has been mentioned in the return of respondents and the

perusal of Annexure-R/2-1 shows that the petitioner failed to deposit the required fee till 6 pm, therefore, Dean Dr. A.K. Sarang held that the petitioner is not entitled for admission on account of her failure to deposit the required fee till 6 pm and she was declared ineligible for admission. Till 6 pm they waited for the petitioner to deposit the fee and as the interview was conducted from 9 am to 2 pm, there was sufficient time for the petitioner to arrange for the fees in five hours. She ought to have arranged the fees. More particularly it was made clear in the rule-7 of the admission and also in the call letter that no additional time will be allowed and the candidate will be required to deposit the fee immediately.

16. Therefore, in view of the above, I am of the opinion that the respondents had acted as per the rules and as per notice to the petitioner, therefore, they have not committed any impropriety and illegality in refusing the admission to the petitioner. The petition is devoid of any merit and the same is liable to be dismissed and it is dismissed.

17. Cost is made easy.

Sd/-
L.C.BHADOO
Judge

27-02-2004

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